Supreme Court of the United States.

No. 250.—October Term, 1906.

Charles H. Moyer, Appellant, vs. Jasper C. Nichols. } Appeal from the Circuit Court of the United States for the District of Idaho.

[December 3d 1906.]

Mr. Justice Harlan delivered the opinion of the Court.

This case does not differ, in principle or in its facts, from *Pettibone* v. *Nichols*, just decided. Moyer was also charged with the murder of Steunenberg, and was arrested in Colorado, upon the warrant of the Governor of that State, and taken to Idaho, and delivered to its authorities. He was embraced in the same indictment with Pettibone, and was held in custody for trial under that indictment. He sued out a writ of *habeas corpus* from the Supreme Court of Idaho, but the writ was dismissed by that court, *Ex parte Moyer*, 85 *Pac.* 897, and a writ of error has been prosecuted to this court. That is case No. 266 on our present docket. He then sued out a writ of *habeas corpus* from the Circuit Court of the United States, and his discharge being refused by the court, he prosecuted the present appeal.

For the reason stated in *Pettibone's* case, the final order is

Affirmed.

The final order of the Circuit Court of the United States for Idaho, in *Haywood* v. *Nichols*, *No.* 251, on appeal, is affirmed on the authority of *Pettibone* v. *Nichols*, *ante*, *p.* , from which, as to the facts or the questions involved, it does not differ. The orders in *Pettibone* v. *Whitney*, *No.* 265, *Morey* v. *Whitney*, *No.* 266, and *Haywood* v. *Whitney*, *No.* 267—each of which cases is here upon writ of error to the Supreme Court of Idaho—involve the same questions as those determined in *Pettibone* v. *Nichols*, and by agreement is to depend upon the judgment in that case, must also be affirmed.

It is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 249.—October Term, 1906.

George A. Pettibone, Appellant, vs. Jasper C. Nichols, Sheriff. } Appeal from the Circuit Court of the United States for the District of Idaho.

[December 3, 1906.]

Mr. Justice McKenna dissenting.

I am constrained to dissent from the opinion and judgment of the court. The principle announced, as I understand it, is that "a Circuit Court of the United States, when asked upon *habeas corpus* to discharge a person held in actual custody by a State for trial in one of its courts under an indictment charging a crime against its laws, cannot properly take into account the methods whereby the State obtained such custody." In other words, and to illuminate the principle by the light of the facts in this case, (facts, I mean, as alleged, and which we must assume to be true for the purpose of our discussion,) that the officers of one State may falsely represent that a person was personally present in the State and committed a crime there, and had fled from its justice, may arrest such person and take him from another State, the officers of the latter knowing of the false accusation and conniving in and aiding its purpose, thereby depriving him of an opportunity to appeal to the courts, and that such person cannot invoke the rights guaranteed to him by the Constitution and statutes of the United States in the State to which he is taken. And this, it is said, is supported by the cases of *Ker* v. *Illinois*, (119 U. S. 436,) and *Mahon* v. *Justice*, (127 U. S. 700.) These cases, extreme as they are, do not justify, in my judgment, the conclusion deduced from them. In neither case was the State the actor in the wrongs that brought within its confines the accused person. In the case at bar, the States, through their officers, are the offenders. They, by an illegal exertion of power, deprived the accused of a constitutional right. The distinction is important to be observed. It finds expression in *Mahon* v. *Justice*. But it does not need emphasizing. Kidnapping is a crime, pure and simple. It is difficult to accomplish; hazardous at every step. All of the officers of the law are supposed to be on guard against it. All of the officers of the law may be invoked against it. But how is it when the law becomes the kidnapper, when the officers of the law, using its forms and exerting its power, become abductors? This is not a distinction without a difference—another form of the crime of kidnapping, distinguished only from that committed

by an individual by circumstances. If a State may say to one within her borders and upon whom her process is served, I will not inquire how you came here; I must execute my laws and remit you to proceedings against those who have wronged you, may she so plead against her own offenses? May she claim that by mere physical presence within her borders, an accused person is within her jurisdiction denuded of his constitutional rights, though he has been brought there by her violence? And constitutional rights the accused in this case certainly did have, and valuable ones. The foundation of extradition between the States is that the accused should be a fugitive from justice from the demanding State, and he may challenge the fact by *habeas corpus* immediately upon his arrest. If he refute the fact he cannot be removed. (*Hyatt* v. *Corkran*, 198 U. S. 691.) And the right to resist removal is not a right of asylum. To call it so in the State where the accused is is misleading. It is the right to be free from molestation. It is the right of personal liberty in its most complete sense. And this right was vindicated in *Hyatt* v. *Corkran*, and the fiction of a constructive presence in a State and a constructive flight from a constructive presence rejected. This decision illustrates at once the value of the right and the value of the means to enforce the right. It is to be hoped that our criminal jurisprudence will not need for its efficient administration the destruction of either the right or the means to enforce it. The decision in the case at bar, as I view it, brings us perilously near both results. Is this exaggeration? What are the facts in the case at bar as alleged in the petition, and which it is conceded must be assumed to be true? The complaint, which was the foundation of the extradition proceedings, charged against the accused the crime of murder on the 30th of December, 1905, at Caldwell, in the county of Canyon, State of Idaho, by killing one Frank Steunenberg, by throwing an explosive bomb at and against his person. The accused avers in his petition that he had not been "in the State of Idaho, in any way, shape or form, for a period of more than ten years" prior to the acts of which he complained, and that the Governor of Idaho knew accused had not been in the State the day the murder was committed, "nor at any time near that day." A conspiracy is alleged between the Governor of the State of Idaho and his advisers, and that the Governor of the State of Colorado took part in the conspiracy, the purpose of which was "to avoid the Constitution of the United States and the act of Congress made in pursuance thereof, and to prevent the accused from asserting his constitutional right under clause 2, section 2, of article IV, of the Constitution of the United States and the act made pursuant thereof." The manner in which the alleged conspiracy had been executed was set out in detail. It was in effect that the agent of the State of Idaho arrived in Denver, Thursday, February 15, 1906, but it was agreed between him and the officers of Colorado that the

arrest of the accused should not be made until some time in the night of Saturday, after business hours—after the courts had closed and judges and lawyers had departed to their homes; that the arrest should be kept a secret and the body of the accused should be clandestinely hurried out of the State of Colorado with all possible speed, without the knowledge of his friends or his counsel; that he was at the usual place of business during Thursday, Friday and Saturday, but no attempt was made to arrest him until 11:30 o'clock P. M. Saturday, when his house was surrounded and he arrested. Moyer was arrested under the same circumstances at 8:45, and he and accused "thrown into the county jail of the city and county of Denver." It is further alleged that, in pursuance of the conspiracy between the hours of five and six o'clock on Sunday morning, February 18, the officers of the State and "certain armed guards, being a part of the forces of the militia of the State of Colorado," provided a special train for the purpose of forcibly removing him from the State of Colorado, and between said hours he was forcibly placed on said train and removed with all possible speed to the State of Idaho; that prior to his removal and at all times after his incarceration in the jail at Denver he requested to be allowed to communicate with his friends and his counsel and his family, and the privilege was absolutely denied him. The train, it is alleged, made no stop at any considerable station, but proceeded at great and unusual speed; and that he was accompanied by and surrounded with armed guards, members of the State militia of Colorado, under the orders and directions of the adjutant general of the State.

I submit that the facts in this case are different in kind and transcend in consequences those in the cases of *Ker* v. *Illinois* and *Mahon* v. *Justice*, and differ from and transcend them as the power of a State transcends the power of an individual. No individual or individuals could have accomplished what the power of the two States accomplished; no individual or individuals could have commanded the means and success; could have made two arrests of prominent citizens by invading their homes; could have commanded the resources of jails, armed guards and special trains; could have successfully timed all acts to prevent inquiry and judicial interference.

The accused, as soon as he could have done so, submitted his rights to the consideration of the courts. He could not have done so in Colorado, he could not have done so on the way from Colorado. At the first instant that the State of Idaho relaxed its restraining power he invoked the aid of *habeas corpus* successively of the Supreme Court of the State and of the Circuit Court of the United States. He should not have been dismissed from court, and the action of the Circuit Court in so doing should be reversed.

I also dissent in Nos. 250, 251, 265, 266 and 267.